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FEDERAL TRADE COMMISSION

16 CFR Part 803

RIN 3084-AA91

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending the premerger notification rules (“the Rules”) to provide a framework for the withdrawal of a premerger notification filing under the Hart Scott Rodino Act (“the Act” or “HSR”). The Act and Rules require the parties to certain mergers and acquisitions to file reports with the Federal Trade Commission (“the Commission”) and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (“the Assistant Attorney General”) (collectively, “the Agencies”) and to wait a specified period of time before consummating such transactions. The reporting and waiting period requirements are intended to enable these enforcement agencies to determine whether a proposed merger or acquisition may violate the antitrust laws if consummated and, when appropriate, to obtain effective preliminary relief in federal court to prevent consummation. This final rulemaking sets forth the procedure for voluntarily withdrawing an HSR filing, establishes when an HSR filing will be automatically withdrawn if a filing publicly announcing the termination of a transaction is made with the U. S. Securities and Exchange Commission (“SEC”) under the Securities Exchange Act of 1934 and rules promulgated under that act, and sets forth the procedure for resubmitting a filing after a withdrawal without incurring an additional filing fee.

DATES: These final rules are effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Robert L. Jones, Deputy Assistant Director, Premerger Notification Office, Bureau of Competition, Room H-303, Federal Trade Commission, Washington, DC 20580, (202) 326-3100, rjones@ftc.gov.

SUPPLEMENTARY INFORMATION:

Statement of Basis and Purpose

Section 7A of the Clayton Act requires the parties to certain mergers or acquisitions to make premerger notification filings with the Agencies and to wait a specified period of time before consummating such transactions. The reporting requirement and the waiting period that it triggers are intended to enable the Agencies to determine whether a proposed merger or acquisition may violate the antitrust laws if consummated and, when appropriate, to obtain effective preliminary relief in federal court to prevent consummation, pursuant to §7 of the Act. Section 7A(d)(1) of the Act, 15 U.S.C. 18a(d)(1), directs the Commission, with the concurrence of the Assistant Attorney General, in accordance with the Administrative Procedure Act, 5 U.S.C. 553, to require that premerger notification be in such form and contain such information and documentary material as may be necessary and appropriate to make that determination. In addition, Section 7A(d)(2) of the Act, 15 U.S.C. 18a(d)(2), grants the Commission, with the concurrence of the Assistant Attorney General, in accordance with 5 U.S.C. 553, the authority to define the terms used in the Act and prescribe such other rules as may be necessary and appropriate to carry out the purposes of Section 7A.

On February 1, 2013, the Commission posted a Notice of Proposed Rulemaking and Request for Public Comment on its website, and the notice was published in the Federal Register on February 14, 2013.¹ The proposal recommended adding §803.12 to the HSR Rules,² which would set forth a procedure for voluntarily withdrawing an HSR filing, establish when an HSR filing would be automatically withdrawn after a party files a public announcement of the termination of a transaction on EDGAR, the Electronic Data Gathering, Analysis, and Retrieval system where companies who file reports with the SEC must make such submissions, and set forth the procedure for resubmitting a filing with no additional filing fee after a withdrawal. Additionally, the Commission proposed adding §803.9(f) to establish that no additional filing fee is required when §803.12(c) is utilized. The comment period closed on April 15, 2013.

Under proposed rule §803.12(a), at any time, an acquiring person, or in transactions to which §801.30 does not apply (a “non-§801.30 transaction”), an acquiring or an acquired person, may withdraw its premerger notification filing by notifying the FTC and the Antitrust Division in writing. Doing so will nullify the filing and terminate the pendency of any formal Request for Additional Information (“Second Request”) if substantial compliance has not been certified. If the transaction has been granted early termination or the initial or extended waiting period has expired, the one year period that parties have under §803.7(a) to consummate the transaction will terminate. If the parties wish to pursue the acquisition at a future date, new notifications and a new filing fee will be required (unless the withdraw-refile procedure in paragraph (c) of §803.12 is utilized), and a new waiting period must be observed prior to consummation of the acquisition.

¹ 78 FR 10574 (February 14, 2013). The Commission also has a pending rulemaking concerning transfers of exclusive rights to pharmaceutical patents. 77 FR 50057 (August 20, 2012).

² 16 CFR Parts 801 to 803.

Proposed rule §803.12(b) linked the continuing viability of an HSR filing with disclosures required by the SEC under the Securities Exchange Act of 1934 (15 U.S.C. §78a et seq.) and rules promulgated under that act. Under those SEC disclosure requirements, when the terms or conditions of a tender offer have not been met and subsequently the tender offer has expired, is terminated or has otherwise been withdrawn, the offeror must file an amendment to its Schedule TO with the SEC. This amended filing brings the pending tender offer to a definitive end, and if the offeror wishes to launch another tender offer, it must start the process from the beginning by filing a new Schedule TO. Similar disclosure requirements exist for acquisitions outside of the §801.30 tender offer context, such that if the parties terminate a definitive material agreement, they must file a Form 8-K with the SEC disclosing the termination of the agreement. If the parties subsequently become interested in moving forward with the transaction once again and sign another definitive material agreement, they must file a new Form 8-K with the SEC. In both cases, the Commission proposed that the associated HSR filing would be automatically withdrawn on the date of the filing with the SEC and that the parties must notify the Agencies by letter when the SEC filing is made. Any subsequent transaction between the parties, if otherwise reportable, would require a new HSR filing and a new filing fee (unless the special circumstances of §803.12(c) apply).

Proposed rule §803.12(c) would apply when a filing is voluntarily withdrawn by the acquiring person pursuant to proposed §803.12(a) or when the acquiring person's filing is automatically withdrawn pursuant to proposed §803.12(b) as discussed above. The acquiring person could resubmit the HSR filing prior to the close of the second business day after withdrawal without paying an additional filing fee if the acquiring person complied with certain

requirements. Proposed rule §803.9(f) would establish that no filing fee is required when Proposed rule §803.12(c) is used.

The Commission received no public comments on the proposed rulemaking from bar associations, industry groups, or from companies or individuals likely to be directly affected by the proposed rules. The Commission received one public comment addressing the Proposed Rules, from Mr. Kenneth Hsu, a law student, on March 29, 2013. The comment is published on the FTC website at <http://www.ftc.gov/os/comments/hsrruleamend/index.shtml>.

Mr. Hsu's comment did not support the rule, expressing concerns that the automatic withdrawal provision could discourage companies from entering into HSR transactions, while potentially incurring substantial costs during a pending investigation. Mr. Hsu did not address any other aspect of the proposed rulemaking. After carefully considering the comment, discussed below, the Commission, with the concurrence of the Assistant Attorney General, is adopting the rule as proposed.³

Public Comment on the Proposed Rules

Mr. Hsu's comment claims that, "the automatic withdrawal provision . . . sets forth convincing disincentives to engage in transactions covered by HSR rules." The comment does not, however, provide any data or basis for this statement. The costs associated with HSR filings do not appear to deter parties from pursuing their transactions. In the rare cases that a party chooses to terminate a transaction and pursue it at later date, it seems highly improbable that companies would forego a transaction based on the costs of refiling because of the auto-withdrawal provision.

³ The final rules makes one minor grammatical change from the proposed rule in §803.12(c), clarifying the language referring to an acquired person's filing.

The comment claims that the definition of “public announcement” is extremely broad and that one statement indicating a desire to recommence a tender offer or agreement made in an SEC filing would trigger the automatic withdrawal procedure. This claim is not accurate. §803.12 is narrowly written and only two specific events - filing a Schedule TO-A with the SEC announcing the expiration or termination of a tender offer, or filing a Form 8-K announcing the termination of a definitive agreement - trigger the automatic withdrawal procedure, a process entirely under the control of the filing company. Recommencing or adjusting the terms of a tender offer is not terminating a tender offer under the rule and would not result in an automatic withdrawal of an HSR filing.

The comment also states that the new rules would impose substantial costs on companies during premerger investigations while waiting for FTC approval and that firms can currently avoid such costs by “temporarily withdrawing offers or agreements until they are assured of FTC approval.” Parties to a transaction, however, cannot avoid these costs by temporarily withdrawing the offer or agreement, as a temporary withdrawal does not currently mitigate the responsibility of complying with the provisions of the HSR Act. Under the rules, if the parties have triggered the auto-withdrawal provision by making the requisite filing with the SEC, then they have publicly announced the termination of the transaction. As a result, the parties mitigate their own costs and relieve the Agencies of the obligation to continue to spend scarce resources on a now hypothetical deal. Additionally, if the parties do intend to restart the deal, the proposed rules allow parties to refile within two business days with no additional filing fee under §§803.12(c) and 803.9(f).

While the comment claims that the proposed rules will create confusion about procedures for FTC and SEC filings, the Commission believes the rules will provide clarity by harmonizing the SEC and FTC treatment of publicly announced terminations of transactions and by formalizing what is currently an informal procedure for voluntarily withdrawing and refiling an HSR notification.

Despite the comment's claim that the rules will impose substantial costs on companies and discourage HSR transactions, no evidence was provided in support of that assertion and, as noted above, no comments were received from bar associations, industry groups, companies, or individuals who are likely to be directly affected by the rules.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-612, requires that the agency conduct an initial and final regulatory analysis of the anticipated economic impact of the amendments on small businesses, except where the Commission certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605.

Because of the size of the transactions necessary to invoke an HSR filing, the premerger notification rules rarely affect small businesses. The 2000 amendments to the Act exempted all transactions valued at \$50 million or less, with subsequent automatic adjustments to take account of changes in GNP resulting in a current threshold of \$70.9 million. Further, none of the rule amendments expands the coverage of the premerger notification rules in a way that would affect small business. In addition, very few entities will refile their premerger notifications and incur new filing costs following withdrawal of their notifications under the rules. Accordingly, the Commission certifies that these rules will not have a significant economic impact on a substantial

number of small entities. This document serves as the required notice of this certification to the Small Business Administration.

Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501-3521, requires agencies to submit “collections of information” to the Office of Management and Budget (“OMB”) and obtain clearance before instituting them. Such collections of information include reporting, recordkeeping, or disclosure requirements contained in regulations. The existing information collection requirements in the Rules and Form have been reviewed and approved by OMB under Control No. 3084-0005. The current OMB clearance expires on August 31, 2014. The rule amendments would have, at most, a minor effect on the FTC’s current burden estimates.⁴

The rule amendments formalize the existing informal procedure for parties to voluntarily withdraw and resubmit their filings. Consequently, the amendments do not change the burden with respect to transactions for which the filings are voluntarily withdrawn under §803.12(a).

Calculating the burden for the auto-withdrawal amendments in §803.12(b) requires an analysis of two potential scenarios. In one scenario, a filing is automatically withdrawn and the acquiring person utilizes the two-day resubmission process under §803.12(c). In that case, no additional transaction is generated as the acquiring person simply restarts the waiting period on the same transaction. In the second scenario, the parties to a terminated transaction for which the filing is automatically withdrawn do not utilize the two-day resubmission process under

⁴ The currently cleared burden hours total is 53,756, calculated as follows: [(1,428 non-index filings x 37 hours) + (22 transactions requiring more precise valuation x 40 hours) + (20 index filings x 2 hours)]. See 76 FR 42471, 42479 (July 19, 2011). The instant amendments, as detailed below, would incrementally add no more than 3 hours to this total. Separately, the FTC has estimated incremental PRA burden of 2,664 hours for the Commission’s proposed amendments to sections 801.1 and 801.2 of the Rules that clarify that a transaction involving the transfer of exclusive rights to a patent in the pharmaceutical industry is potentially reportable under the Act. See 77 FR 50057 at 50061.

§803.12(c) but later decide to move forward with the transaction. In that case, a new filing would be required. Both of these scenarios are rare, as it is very unlikely that a transaction for which the HSR filing is automatically withdrawn during the merger review process (due to the parties' SEC filing indicating that the transaction has been terminated) would be subsequently restarted. Based on past experience, this would occur approximately once every fifteen years. If the parties to such a transaction do not utilize the two-day resubmission process, the rule change would require non-index HSR filings for, on average, a small fraction of a single transaction per year. The currently cleared estimate for a single non-index filing is 37 hours.⁵ See 76 FR 42471, 42479 (July 19, 2011). PNO staff believes that this new filing would require the same work and diligence as any new non-index filing. Assuming, then, an average of 37 hours for one transaction, when applied to a traditional frequency of .067 (one every fifteen years), this amounts to an annual average of 3 hours, rounded up. Applied to an assumed hourly wage or rate of \$460/hour for an executive or attorney's handling, associated labor cost would approximate \$1,380. This labor cost would be even lower if, instead of filing a new premerger notification, the parties utilized the two-day resubmission process, which requires only a new certification, new affidavit, and an update of Item 4 of the form.

PNO staff believes that any incremental capital/non-labor costs presented by the amendments would be marginal. Businesses subject to the Rules generally have or would obtain necessary equipment for other business purposes. Staff believes that the existing requirements

⁵ "Index" filings pertain to banking transactions, and thus would not be affected by the amendments. Index filings are incorporated, however, into the FTC's currently cleared burden estimates (the FTC has jurisdiction over the administration of index filings). They are mentioned here to distinguish them from and to further explain a "non-index" filing. Clayton Act Sections 7A(c)(6) and (c)(8) exempt from the requirements of the premerger notification program certain transactions that are subject to the approval of other agencies, but only if copies of the information submitted to these other agencies are also submitted to the Agencies. Thus, parties must submit copies of these "index" filings, but completing the task requires significantly less time than non-exempt transactions (which require "non-index" filings), as illustrated by the calculations in footnote 2 above.

(and extension to certain additional transactions) necessitate ongoing, regular training so that covered entities stay current and have a clear understanding of federal mandates. This should constitute a small portion of and be subsumed within the ordinary training that employees receive apart from that associated with the information collected under the Rules and the corresponding HSR Form.

The PRA requires that an agency's collection of information be necessary for the proper performance of the agency's function, and that the information collected have "practical utility."⁶ According to the PRA, "practical utility" is the ability of an agency to use information, particularly the ability to process such information in a timely and useful fashion.⁷ The rule amendments will formalize and clarify procedures for voluntarily withdrawing and refiling HSR notifications. The amendments will also harmonize the SEC and FTC treatment of publicly announced terminations of transactions. By allowing parties to voluntarily withdraw the filings for transactions they are no longer pursuing and by automatically withdrawing filings where the parties have notified the SEC of the termination of the transactions, the amendments will relieve the Agencies of the obligation to continue to spend scarce resources on transactions that become hypothetical. If at a later date the parties choose to renew the transactions, they may, depending

⁶ 44 U.S.C. 3508: Determination of necessity for information; hearing.

Before approving a proposed collection of information, the Director [of the Office of Management and Budget] shall determine whether the collection of information by the agency is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility. Before making a determination the Director may give the agency and other interested persons an opportunity to be heard or to submit statements in writing. To the extent, if any, that the Director determines that the collection of information by an agency is unnecessary for any reason, the agency may not engage in the collection of information.

⁷ 44 U.S.C. 3502(11). In determining whether information will have "practical utility," OMB will consider "whether the agency demonstrates actual timely use for the information either to carry out its functions or make it available to third-parties or the public, either directly or by means of a third-party or public posting, notification, labeling, or similar disclosure requirement, for the use of persons who have an interest in entities or transactions over which the agency has jurisdiction." 5 CFR 1320.3(l).

on the circumstances, re-certify and update their premerger notification filings or submit new premerger notification filings. These updated materials are necessary for the Agencies to review the transactions in accordance with the HSR Act.

List of Subjects in 16 CFR Part 803

Antitrust.

For the reasons stated in the preamble, the Federal Trade Commission amends 16 CFR part 803 as set forth below:

PART 803 – TRANSMITTAL RULES

1. The authority citation for part 803 continues to read as follows:

Authority: 15 U.S.C. 18a(d).

2. Amend § 803.9 by revising the introductory text of paragraph (a) and adding paragraph (f) to read as follows:

§803.9 Filing fee.

(a) Each acquiring person shall pay the filing fee required by the act to the Federal Trade Commission, except as provided in paragraphs (b), (c) and (f) of this section. No additional fee is to be submitted to the Antitrust Division of the Department of Justice.

* * * * *

(f) For a transaction described by paragraph (c) of §803.12, the parties shall pay no additional filing fee.

3. Add § 803.12 to read as follows:

§803.12 Withdraw and refile notification.

(a) *Voluntary.* An acquiring person, and in the case of an acquisition to which §801.30 does not apply, an acquired person, may withdraw its notification by notifying the Federal Trade Commission and the Antitrust Division in writing of such withdrawal.

(b) *Upon public announcement of termination.* An acquiring person's notification or, in the case of an acquisition to which §801.30 of this chapter does not apply, an acquiring or an acquired person's notification, will be deemed to have been withdrawn if any filing that publicly announces the expiration, termination or withdrawal of a tender offer or the termination of an agreement or letter of intent is made by the acquiring person or the acquired person with the U.S. Securities and Exchange Commission ("SEC") under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) and rules promulgated under that act. The acquiring person or acquired person must notify the Federal Trade Commission and the Antitrust Division by letter that such filing has been made with the SEC and the withdrawal shall be deemed effective on the date of the SEC filing. Withdrawal of the HSR notification(s) shall occur even if statements are made in the SEC filing indicating a desire to recommence the tender offer or enter into a new or amended agreement or letter of intent. This paragraph is inapplicable if the initial 15-day or 30-day waiting period has expired without issuance of a request for additional information or documentary material and without an agreement in place with the Agencies to delay closing of the transaction ("a timing agreement"); or early termination of that waiting period has been granted, without a timing agreement in place; or if a request for additional information or documentary material has been issued and the Agencies have either granted early termination or allowed the extended waiting period to expire following certification of compliance without a timing agreement in place.

(c) *Resubmission without a new filing fee.* (1) An acquiring person whose notification has been voluntarily withdrawn pursuant to paragraph (a) of this section, or an acquiring person whose notification is deemed to have been automatically withdrawn under paragraph (b) of this section, may resubmit its notification, thereby initiating a new waiting period for the same transaction without an additional filing fee pursuant to §803.9(f). This procedure may be used only one time, and only under the following circumstances:

- (i) The proposed acquisition does not change in any material way;
- (ii) The resubmitted notification is recertified, and the submission, as it relates to Items 4(a), 4(b), 4(c), and 4(d), is updated to the date of the resubmission;
- (iii) A new executed affidavit is provided with the resubmitted HSR filing; and
- (iv) The resubmitted notification is refiled prior to the close of the second business day after withdrawal.

(2) If the acquired person, in the case of an acquisition to which §801.30 of this chapter does not apply, withdraws its notification under paragraph (a) of this section or if its notification is automatically withdrawn under paragraph (b) of this section, no resubmission is available under this paragraph.

Examples: 1. A commences a tender offer to acquire 100% of B's voting securities and files a Schedule TO with the SEC and a premerger notification filing with the Federal Trade Commission and the Antitrust Division ("the Agencies"). Subsequently, A decides to withdraw the tender offer and files an amended Schedule TO announcing the withdrawal. A states in its amended filing, designated as a Schedule TO-T/A on EDGAR, the SEC's Electronic Data Gathering, Analysis, and Retrieval system, which announces the tender offer withdrawal that it

reserves the right to recommence the tender offer, should circumstances change. A's premerger notification filing is deemed to have been withdrawn on the date of the filing of the Schedule TO-T/A with the SEC.

2. A commences a tender offer for at least 75% of B's voting securities and files a Schedule TO with the SEC stating that the tender offer will expire after 30 days. A also files a premerger notification filing with the Agencies and a request for additional information or documentary material ("Second Request") is issued. At the end of the 30 day effective period of the tender offer sufficient shares have not been tendered and the tender offer expires. A files a closing Schedule TO-T/A with the SEC announcing the expiration of the tender offer. A's premerger notification filing is deemed to have been withdrawn on the date of the filing of the Schedule TO-T/A with the SEC.

3. A commences a tender offer for 100% of B's voting securities and files a Schedule TO with the SEC stating that shareholders tendering their shares will receive \$2.00 per share. During the effective period of the tender offer, A increases the amount it will pay per share to \$2.25 and files a Schedule TO-T/A with the SEC announcing the increased share price. A's premerger notification filing is not deemed to have been withdrawn on the date of the filing of the Schedule TO-T/A with the SEC because it is not notifying the SEC that the tender offer has expired or is being withdrawn.

4. A commences a tender offer for 100% of B's voting securities and files a Schedule TO with the SEC. During the effective period of the tender offer, A and B enter into a merger agreement and A files a Schedule TO-T/A with the SEC announcing the withdrawal of the tender offer. A's premerger notification filing is deemed to have been withdrawn on the date of the filing of the

Schedule TO-T/A with the SEC. A can, however, refile within two business days on the merger agreement, commencing a new waiting period, without paying an additional filing fee, if it meets the requirements of §803.12(c).

5. A and B enter into a merger agreement conditioned on successful completion of due diligence. A and B file premerger notification filings with the Agencies and also Form 8-Ks with the SEC announcing they have entered into an agreement to merge. Subsequent findings in the course of due diligence cause A and B to terminate the merger agreement and A files an additional Form 8-K announcing the termination of an agreement. A states that it may seek to enter into a new or amended merger agreement with B. A's premerger notification filing is deemed to have been withdrawn on the date of the filing of the Form 8-K announcing the termination of the merger agreement. A can, however, refile within two business days on a new merger agreement, commencing a new waiting period, without paying an additional filing fee, if it meets the requirements of §803.12(c).

6. A and B enter into a merger agreement and file premerger notification filings with the Agencies and Form 8-Ks with the SEC. Second requests are issued. A and B subsequently certify compliance with the second request, starting the extended waiting period. Prior to the expiration of the extended waiting period, the parties enter into an agreement with the agency conducting the investigation to delay closing of the transaction, allowing the consummation of the acquisition only after 30-days' notice (a "timing agreement"), and the extended waiting period expires. During the pendency of the timing agreement, A and B terminate the merger agreement and A files a Form 8-K with the SEC announcing the termination of an agreement. A's premerger notification filing is deemed withdrawn on the date of the SEC filing as a result of

that filing, even though the extended waiting period has expired and the parties are still within the one year period following that expiration under §803.7(a). Note that had the extended waiting period expired and no timing agreement had been entered into, a filing with the SEC announcing the termination of the agreement would not result in the withdrawal of A's premerger notification filing.

7. A and B enter into a merger agreement and file premerger notification filings with the Agencies and Form 8-Ks with the SEC. The agencies complete their review and early termination of the initial 30-day waiting period is granted. Prior to the expiration of the one year period following the grant of early termination, A and B terminate the merger agreement and A files a Form 8-K with the SEC announcing the termination of an agreement. A's premerger notification filing is not deemed withdrawn as a result of the SEC filing because the initial 30-day premerger notification waiting period had been granted early termination. Therefore, the parties still have the full one year period prior to the expiration of the notification under §803.7(a) to consummate the transaction should it be recommenced.

By direction of the Commission, Commissioner Wright dissenting.

Donald S. Clark
Secretary.

Note: The following statement will not appear in the Code of Federal Regulations.

Dissenting Statement of Commissioner Joshua D. Wright

Regarding Amendments to Hart-Scott-Rodino Rules

FTC Matter No. P989316

June 28, 2013

The Commission voted today to publish final amendments to the Hart-Scott-Rodino (“HSR”) Rules. The final amendments establish, among other things, a procedure for the automatic withdrawal of an HSR filing upon the submission of a filing to the U.S. Securities and Exchange Commission announcing that the notified transaction has been terminated.¹ I want to thank staff in the Premerger Notification Office for their efforts in drafting the amendments to the HSR Rules and for their diligent administration of the premerger notification program.

I disagree with the Commission’s decision to publish the final amendments to the HSR Rules. It has long been accepted as a principle of good governance that federal agencies should issue new regulations only if their benefits exceed their costs.² In my view, the record does not support the conclusion that the new automatic withdrawal

¹ The amendments to the HSR Rules also would codify, with one modification, the existing procedure for pulling and refiling an HSR notification without payment of an additional filing fee. I have no objection to this portion of the amendments.

² See Exec. Order No. 13,563, 3 C.F.R. 215 (2012), *reprinted in* 5 U.S.C. § 601 app. (2006 & Supp. V 2011); Exec. Order No. 12,866, 3 C.F.R. 638 (1994), *reprinted as amended in* 5 U.S.C. § 601 (2006 & Supp. V 2011); Exec. Order No. 12,291, 3 C.F.R. 127 (1982), *revoked by* Exec. Order No. 12,866, 3 C.F.R. 638.

rule offers any benefits that justify its adoption. The notice of proposed rulemaking claims the automatic withdrawal rule is necessary to prevent the antitrust agencies from “expend[ing] scarce resources on hypothetical transactions.”³ However, I have not seen evidence that any of the over 68,000 transactions that have been notified under the HSR Rules has resulted in the allocation of resources to a truly hypothetical transaction.

In the absence of evidence that the automatic withdrawal rule would remedy a problem that exists under the current HSR regime, and thus benefit the public, I believe we should refrain from creating new regulations.

[FR Doc. 2013-16539 Filed 07/09/2013 at 8:45 am; Publication Date: 07/10/2013]

³ Premerger Notification; Reporting and Waiting Period Requirements, 78 Fed. Reg. 10574, 10575 (proposed Feb. 14, 2013) (to be codified at 16 C.F.R. pt 803).